

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF WASHINGTON

UNITED STATES OF AMERICA,
Plaintiff,

v.

DANIEL D. SMITH,
Defendant.

No. CR-03-228-FVS

ORDER DIRECTING GOVERNMENT
TO FILE RESPONSE TO
DEFENDANT'S SECOND AMENDED
§ 2255 MOTION

BEFORE THE COURT is the defendant's motion seeking relief under 28 U.S.C. § 2255, Ct. Rec. 33, the defendant's Amended § 2255 motion, Ct. Rec. 34, and the defendant's Second Amended § 2255 motion, Ct. Rec. 35.

A § 2255 motion filed by a federal prisoner is not a proceeding in the original criminal prosecution, but is instead an independent civil suit. *Heflin v. United States*, 358 U.S. 415, 418 n.7, 79 S.Ct. 451, 453 n.7, 3 L.Ed.2d 407 (1951). As such, it is governed by the rules governing civil proceedings. Pursuant to Rule 15(a) of the Federal Rules of Civil Procedure, leave to amend pleadings by a district court "shall be freely given when justice so requires." Fed.R.Civ.P. 15(a); see also Fed.R.Civ.P. 7(b)(2) (making the rules applicable to the form of pleadings also applicable to motions). Thus, the grant or denial of an opportunity to amend a § 2255 motion is within the discretion of the Court. Moreover, principles

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1 governing *pro se* matters oblige the Court to relax procedural rules
2 in favor of the *pro se* petitioner. See *Hainers v. Kerner*, 404 U.S.
3 519, 521, 92 S.Ct. 594, 596, 30 L.Ed.2d 652 (1972) (*pro se* complaints
4 held to "less stringent standards than formal pleadings drafted by
5 lawyers").

6 Therefore, even though the defendant did not request permission
7 to file amended § 2255 motions, the Court accepts the defendant's
8 Second Amended § 2255 motion, Ct. Rec. 35, as an original. The
9 defendant's motions are all timely filed under § 2255. The Court's
10 review of the defendant's § 2255 motions shall include all of the
11 defendant's claim challenging the legality of his sentence raised in
12 his Second Amended § 2255 motion.

13 Under 28 U.S.C. § 2255, a federal prisoner may move the court to
14 vacate, set aside, or correct his or her sentence on the grounds that
15 (1) the sentence was imposed in violation of the Constitution or laws
16 of the United States, (2) the court was without jurisdiction to
17 impose such sentence; or (3) the sentence was in excess of the
18 maximum authorized by law. "Unless the motion and the files and
19 records of the case conclusively show that the prisoner is entitled
20 to no relief, the court shall cause notice thereof to be served upon
21 the United States attorney...." 28 U.S.C. § 2255. However, the
22 Court may *sua sponte* dismiss the motion if "it plainly appears from
23 the face of the motion ... that the movant is not entitled to relief
24 in the district court." Rule 4(b), Rules Governing Section 2255
25 Proceedings For the United States District Courts.

26 The Court has now had an opportunity to review the defendant's

1 motions. Having done so, the Court cannot say that the defendant is
2 entitled to no relief under 28 U.S.C. § 2255. For this reason, the
3 government is ordered to respond to the defendant's Second Amended
4 § 2255 motion, Ct. Rec. 35. Accordingly,

5 **IT IS HEREBY ORDERED:**

- 6 1. The government shall file a **response** to the defendant's
7 Second Amended Motion, **Ct. Rec. 35**, on or before **May 23,**
8 **2005**, and serve the same on the **defendant**.
- 9 2. The defendant shall file a reply, if he chooses, by **June**
10 **20, 2005**.
- 11 3. The defendant's original § 2255 motion, **Ct. Rec. 33**, and
12 the defendant's amended § 2255 motion, **Ct. Rec. 34**, are

13 **STRICKEN AS DUPLICATIVE.**

14 **IT IS SO ORDERED.** The District Court Executive shall **provide a**
15 **copy of the defendant's motion to the plaintiff** and shall enter this
16 order and furnish copies to the parties.

17 **DATED** this 22nd day of April, 2005.

18 _____
19 s/ Fred Van Sickle
20 Fred Van Sickle
21 Chief United States District Judge
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